THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 7th day of December,2007

W.P.Nos.8259, 11263, 14234, 14530 and 20266 of 2007

W.P.No.8259 of 2007

Between:-

K.Venkataramana … Petitioner

and

The Southern Power Distribution Company Ltd., Tirupathi, rep. by its Chairman & Managing Director and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.8259, 11263, 14234, 14530 and 20266 of 2007

COMMON ORDER:

In this batch of Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

It appears, petitioners are all working under various contractors, who were engaged by the erstwhile A.P. State Electricity Board (now the 1st respondent). Respondent No.1 issued a notification dated 6-6-2006 calling for applications for the post of Contract Junior Lineman. The age requirement was that the applicant should be between 18 and 35 years as on 6-6-2006. However, thereafter, a revised notification was issued on 20-10-2006 and there was no change insofar as age criterion was concerned. It appears, the cases of the petitioners were rejected on the ground that they are overaged.

According to the petitioners, they are fully eligible and qualified for being considered for appointment to the post of Contract Junior Lineman, except for the age criterion. They have been working for the last several years and the period of service rendered by them with the respondent-organization was not given credit to for the purpose of computing the upper age limit and they are entitled for being given credit to the experience i.e. the number of years of service rendered by them with the respondent-organization before the notification dated 6-6-2006 was issued. Not giving credit to and not deducting the said period of service rendered by them for the purpose of reckoning upper

age limit is arbitrary and illegal.

Learned counsel for the petitioners relied upon APSEB Employees Service Regulations Part I and submitted that the Board has all the power to relax the age criterion for the purpose of appointment on contract basis as Junior Lineman in pursuance of the notification dated 6-6-2006. Learned counsel have drawn attention of the Court to Regulation 3(c), which reads as under:

> "(c) The Board may also appoint any person or persons on contract on such terms as may be considered necessary and in such cases, the conditions and classifications of the service of such persons shall, **except in so far as they are not governed by the terms of contract, be regulated by the provisions of the regulations framed by the Board**." (emphasis supplied)

Learned counsel has also drawn attention of the Court to O.S.S. Statutory Rules, particularly to Note I of Regulation 5 of the said Rules, which reads as under:

> "**5. Qualifications:-** (1) No person shall be eligible for appointment to any category or grade if he has completed 25 years of age as on the date of appointment.
>
> Note 1: This age limit referred to in this rule shall be relaxed to the extent of the period served, if any, in workcharged establishment or on daily wages as the case may be."

Learned counsel further contended that the petitioners are entitled for relaxation automatically to the extent of the period served with the Department as contract labour. In this regard, learned counsel relied upon the decisions reported in **K. SATHAIAH v. A.P.S.E.B.**[1] and **STEEL AUTHORITY OF INDIA v. NATIONAL UNION WATER FRONT WORKERS**[2] and submitted that the action of the respondents in not relaxing the age is nothing but an invidious indiscrimination against the petitioners. Respondents are trying to prefer freshers to that of those experienced and serving the Department sincerely and honestly with all legitimate expectation that

their services would be regularized in future.

Learned counsel for the respondents, however, strenuously contended that the judgment reported in **STEEL AUTHORITY OF INDIA** case (2 supra) has no application to the facts of these cases and the OSS Rules have no statutory force; therefore, they cannot be looked into for the purpose of deciding these cases. In support of his contentions, learned counsel relied upon the decisions in **STATE OF RAJASTHAN v. HITENDRA KUMAR BHATT**[3], **FOOD CORPORATION OF INDIA v. BHANU LODH**[4] and **KENDRIYA VIDYALAYA SANGATHAN v. SAJAL KUMAR ROY**[5] and **TIRUMALA TIRUPATI DEVASTHANAMS v. K.JOTHEESWARA PILLAI**[6].

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

The only question that falls for consideration in this batch of Writ Petitions is whether the petitioners are entitled to be given relaxation of the period of service rendered by them for the purpose of reckoning the upper age limit?

It is an admitted fact that the petitioners are more experienced in their field of activity and have been working for the last more than 10 years with the APSEB/1st respondent herein. The service rendered by them was not given credit to while considering their cases as per the Notification dated 6-6-2006 as revised on 20-10-2006. In fact, as per the submissions made by the learned counsel for the respondents, persons, who are less experienced i.e. freshers, are preferred to that of the persons, who are more experienced. Learned counsel, though stated that unless and until there is a rule for relaxation, the appointments have to be proceeded with only in accordance with the

notification and in the notification, there is no provision for relaxing the age of a person beyond 35 years. I am of the opinion that this argument of the learned counsel for the respondents cannot be countenanced. It is not the case of the respondents that a person, who is 35 years of age and who does not have any experience is not being appointed. Their case is that one must be between the age of 18 and 35 years for the purpose of considering his case for appointment to the post of Contract Junior Lineman. The very scheme of appointment of Junior Lineman on contract basis seems to have been evolved for the purpose of regularization of the services of temporary personnel, who served for a period of 2 years or more. Under those circumstances, petitioners are not only denied contract employment, but also denied their legitimate expectation to become a regular employee of the respondent-organization. In the guise of overage, the petitioners were not considered for appointment on contract basis. The very purpose of age restriction, educational qualification and other tests like pole climbing etc., is for the purpose for appointing a qualified person, who can, if necessary, be regularized in future. Therefore, I am of the opinion that the petitioners are being denied their legitimate expectation of being appointed on contract basis as Junior Lineman, which is likely to be made permanent during the course of time. This denial of relaxation of age in respect of seniormost workers for the purpose of appointing them on contract basis as Contract Junior Lineman is unreasonable and irrational. The general proposition of law does require that whenever a person, who worked with the organization is sought to be appointed either on contract basis or otherwise, the age criterion shall be reckoned by giving credit to the period of service rendered by them in the organization. Such a benefit is not extended by the respondents to the petitioners herein. It is not

the case of the respondents that the petitioners are not eligible for being appointed to the post of Junior Lineman (contract). In fact, they have been working for the last more than 10 years and attending to the same work as is supposed to be attended to by them on their appointment on contract basis. There is no rationale or object sought to be achieved by denying the legitimate expectation of relaxation of age criterion for experienced people, except denying them employment. May be, people, who are below 35 years of age are also experienced, but that does not mean that the petitioners, who have crossed 35 years of age as on the date of notification, shall be excluded from consideration for the purpose of appointment to the post of contract Junior Lineman. That seems to be not the aim of either O.S.S. Statutory Rules or the APSEB Employees Service Regulations Part I. In fact, the Board has all the powers to relax the age to the extent of the service rendered under a contractor/daily wage basis and other criterion required, if persons already working with the Department are available. In this regard, the rules noticed above are very clear. Further, insofar as giving age relaxation by giving credit to the service rendered by an employee is concerned, it may be necessary to notice a few Judgment of the Supreme Court, i.e. **RAM SUKH v. STATE OF RAJASTHAN**[7], **BHUPINDER SINGH SAINI v. STATE OF PUNJAB**[8] and **PANKAJ GUPTA v. STATE OF JAMMU AND KASHMIR**[9].

In **K. SATHAIAH**'s case (1 supra), a Division Bench of this Court while dealing with regularization of ex-casual labour in the erstwhile A.P. State Electricity Board, held that it would be most unreasonable to read in the age qualification in respect of ex-casual labour, who are to be considered for regular absorption.

In **STEEL AUTHORITY OF INDIA v. NATIONAL UNION**

WATER FRONT WORKERS' case (2 supra), it was held by the Supreme Court as under:

> "123 (6) If the contract is found to be genuine and prohibition notification under S. 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and **where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications**." (emphasis supplied)

In **RAM SUKH v. STATE OF RAJASTHAN** (5 supra), the Supreme Court observed as under:

> "7. These observations are equally relevant to primary school teachers with whom we are concerned. The primary school teachers are of utmost importance in developing a child's personality in the formative years. It is not just enough to teach the child alphabets and figures, but much more is required to understand child psychology and aptitudes. They need a different approach altogether. Only trained teachers could lead them properly. The untrained teachers can never be proper substitute to trained. We are, therefore, unable to give any relief to the petitioners.
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> 8. We may, however, observe that since petitioners have served in rural areas, it would be proper for the Government to allow them relaxation in age to the extent of service rendered as teachers, for appointment under the State if they possess other requisite qualifications. We accordingly direct the State Government to make an appropriate rule or order to that effect."

In **BHUPINDER SINGH SAINI v. STATE OF PUNJAB** (8 supra), it was held by the Supreme Court as under:

> "4. It is crystal clear that from the appointment letters issued to the appellants in the Municipality as Registering Clerks that the appointment was of a very precarious nature without conferring any right on the appointees. But the order of termination issued on 10th of April, 1997 unequivocally indicates that those appointees were in fact treated to be surplus employees in accordance with the instructions

of Government of India and such declaration had been made by the Chief Secretary, Punjab Government. It is also undisputed that the appellants have served in the Census organisation from 1991 till 1994 though with break and then in the Municipality from 10th of March, 1995 till 10th of April, 1997. Taking these factors into consideration we think it appropriate to direct that it would be open for these appellants to compete along with others against any available vacancies and the Government of Punjab would consider the cases of these appellants by relaxing the age to the extent they have served in the Census organisation as well as in the Municipality.

5. Be it stated that the so-called relaxation would be only on account of age and not any other criteria which is fixed for any appointment in question……."

In **PANKAJ GUPTA v. STATE OF JAMMU AND KASHMIR** (9 supra) it was held by the Apex Court as under:

"6. No person illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he should be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right for regularisation in the service because of the erroneous procedure adopted by the concerned authority in appointing such persons. Hence, the reliefs are required to be moulded especially in view of the fact that the appellants were appointed as early as in the year 1997 and ever since they have been working as Orderlies. Process Servers, Guards, etc. Moreover, the appointments of the appellants were made on the basis of the recommendations of the members of the Legislative Assembly and Legislative Council and on the basis of the decision made by the State of Jammu and Kashmir pursuant to a detailed discussion on the floor of the Legislative Assembly regarding lack of proper representation of rural masses as compared to urban candidates in Government jobs. Hence, we issue the following directions:-

1. All the vacant posts shall be notified for appointment and applications called for in accordance with the Rules within six months from the date of the receipt of his Judgment.

2. All the appellants herein may be permitted to submit application for appointment against such notification.

3. As regards the upper age limit, these appellants shall be given relaxation but there shall not be any relaxation in the matter of the basic qualifications for appointment to Class IV posts.

4. The appellants may be allowed to continue in service till such regular recruitments are made and these posts are filled up by a regular process of appointment."

From the above, it is clear that firstly, there is a rule under the O.S.S.Statutory Rules read with A.P.S.E.B. Employees' Service Regulations Part I for relaxing the upper age limit insofar as daily wage employees/contract labour is concerned. Secondly, the judgments of the Apex court are very clear that age relaxation must be given to the serving employee to the extent of the period of service rendered by them whenever a general recruitment takes place.

In the judgment relied upon by the learned counsel for the respondents in **HITENDRA KUMAR BHATT**'s case (3 supra), the Supreme Court observed as under:

> "6. Looking to the clear terms of the advertisement which we have referred to above, the respondent was not eligible for consideration. It is submitted by the respondent before us that since he has been continued and has now been confirmed we should not disturb his appointment. He has requested that his case should be considered sympathetically. The fact, however, remains that the appellants have taken the correct stand right from the beginning. The respondent's application was not considered and he was not called for an interview. It was on account of interim orders which were obtained by the respondent that he was given appointment and continued. He was aware that his appointment was subject to the outcome of his petition. One cannot, therefore, take to sympathetic a view of the situation in which the respondent finds himself. A cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others."

In **BHANU LODH**'s case (4 supra), the Apex Court observed as under:

> "12…….. The directive dated 21st August, 1995 indicates that the policy was not to have any creation/up-gradation of posts of any level except where completely unavoidable. The policy was that "the existing vacancies shall not be filled up by fresh recruitment", and that there shall be no further revision in the conditions of service without the prior approval of the Central

Government. The policy directive issued on 6th November, 1995 was a sequel and highlighted something being done contrary to the Regulations. While the maximum age prescribed under the Recruitment Rules is 35/40 years for the concerned posts, departmental candidates in the age of 52-53 years were proposed to be appointed. Even assuming that there is a power of relaxation under the Regulations, we think that the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an 'open Sesame' for all and sundry. The wholesale go by given to the Regulations, and the manner in which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under Section 6(2) of the Act……..

20…… The learned counsel contend that the Board was therefore the only authority to arrive at the opinion that it was necessary and expedient to relax the maximum age limit, and in doing so the Board had absolute discretion and it was not open to the Central Government to interfere with such discretion by the so-called exercise of its powers under section 6(2) of the Act. For this reason also counsel contends that the action of the appellants is liable to be faulted.

21. In our view, the contention is without merit. In the first place, section 45 of the Act makes it clear that the power of the Food Corporation of India to frame regulations under the Act is subject to the general restriction that the regulations are not inconsistent with the Act and the Rules made thereunder. Section 6(2) is a provision of the Act itself which empowers the Central Government to issue directives and bind the Board of Directors of Food Corporation to comply with such directives. Hence, it is not possible to read any regulation framed under section 45 as inconsistent with or overriding a directives or instruction validly given by the Central Government to FCI under section 6(2) of the Act. Apart therefrom, we are not able to appreciate the argument that the power of the Board of Directors to relax the prescribed age limit can be exercised in such an unreasonable manner as to distort the regulation itself. As we have noticed, the relaxation could not have been done for the benefit of persons who were over-aged by about 15 years. For both reasons, the contention fails.

In **SAJAL KUMAR ROY**'s case (5 supra), following the decision in **BHANU LODH**'s case (4 supra) it was held by the Supreme Court

that the discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof.

In **K. JOTHEESWARA PILLAI**'s case (6 supra), the Apex Court held as under:

> "5……..The Rules do not mention anywhere that while making direct recruitment any services rendered as an NMR employee has to be taken into consideration or some relaxation in age is to be granted on its basis. The writ petitioners had worked for a brief period as NMR employees in 1984-86. It was after a gap of more than six years that they were appointed by way of direct recruitment on 17.8.1992. Under the Rules, they were clearly ineligible for being given any appointment as admittedly they were overage.
>
> 7…….Therefore, the view taken by the learned single Judge that by not granting exemption from age criterion the appellant had indulged in invidious discrimination is clearly erroneous law."

The said judgments do not support the case of the respondents and they do not apply to the facts of these cases. Therefore, there is no necessity of delving upon them in detail. In the instant cases, there are statutory rules providing relaxation of age, as noticed above. Though a faint effort has been made by the learned counsel for respondents that these rules are not applicable to the case of the petitioners, in the facts and circumstances of the case, it cannot be said that those rules are not applicable to the petitioners. In fact, Regulation 3(c) of A.P.S.E.B. Employees' Service Regulations Part I, itself would indicate "except insofar as they are not governed by the terms of contract, be regulated by the provisions of the regulations framed by the Board". Rule 5 of O.S.S. Statutory Rules would indicate that the age limit referred to in the Rules shall be relaxed to the extent of the service rendered in workcharged establishment or on daily wages, as the case may be. Hence, I am of the opinion that non-granting of relaxation of age to the petitioners while considering their cases for

appointment to the post of Contract Junior Lineman with the respondent-organization is arbitrary and illegal. As such, it may not be proper for the respondents in not allowing relaxation of age to the extent of service rendered by the petitioners as contract labour or on daily wage basis for appointment under them, if they possess the other requisite qualifications. Therefore, the respondents are directed to consider for granting relaxation of age, for the purpose of reckoning upper age limit, to the extent of the period of service rendered by the petitioners in the organization and they shall be appointed as Contract Junior Lineman, if they satisfy the other criteria, either in the existing or future vacancies (as soon as the one year period of contract as per the notifications is elapsed). It is made clear that except the age relaxation, petitioners are not entitled for any other concessions.

With the above directions, the Writ Petitions are disposed of. No order as to costs.

07-12-2007

prk

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[1] 1996(5) SLR 676
[2] 2001 AIR SCW 3574
[3] 1997(6) SCC 574
[4] 2005(3) SCC 618
[5] 2006(8) SCC 671
[6] AIR 2007 SC 1771
[7] AIR 1990 SC 592
[8] AIR 2002 SC 2535
[9] 2004 AIR SCW 5332